



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

September 8, 1987

Mr. Charles W. Herf
Gaston Snow Moya Bailey
Bowers & Jones, Esquire
4722 North 24th Street, Suite 400
Phoenix, Arizona 85016

Re: 187-104 (87-105)

Dear Mr. Herf:

Pursuant to A.R.S. § 15-253(B), we have reviewed your opinion, dated June 3, 1987, to Dr. Duane Sheldon, Superintendent of the Scottsdale Unified School District, concerning the employment of a Governing Board member by the Arizona Education Association as a Program Director, and we disagree with your conclusion that there are no readily-apparent issues requiring the Board member to disqualify herself from participation in the decision-making process of the Board.

The Arizona Education Association advocates positions on issues which affect and must be decided upon by school district governing boards. As a practical matter, the success or failure of the Association in obtaining favorable action on certain issues by school districts indirectly affects the financial interest of the Association and its ability to employ personnel such as a Program Director. We feel that the Scottsdale Unified School District Governing Board member should consider on a case-by-case basis each issue that raises a question pursuant to A.R.S. § 38-503.

Very truly yours,

A handwritten signature in cursive script that reads "Bob Corbin".

BOB CORBIN
Attorney General

BC:MCC/mmm
9938e

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June 3, 1987

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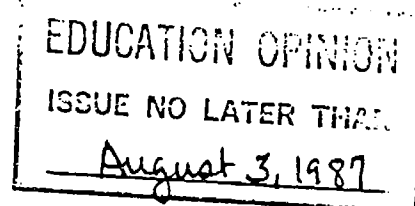
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6/4/87

Dr. Duane Sheldon, Superintendent
SCOTTSDALE UNIFIED SCHOOL DISTRICT
3811 North 44th Street
Phoenix, Arizona

Re: Conflict of Interest

Dear Duane:



This letter is written in response to a request on behalf of the Governing Board of the Scottsdale Unified School District to analyze Arizona's conflict of interest statutes and their applicability, if any, to a Governing Board member, Ms. Donna Campbell, who has recently accepted employment with the Arizona Education Association in the position of Program Director - External Operations. The issue is whether or not the position currently occupied by Ms. Campbell with the Arizona Education Association ("AEA") creates a conflict that must be disclosed under Arizona's conflict of interest statutes and limits her from considering matters that may come before the Governing Board for decision. After reviewing the relevant statutes, case law, Attorney General's Opinion, and as indicated in the following discussion with the limitations contained therein, based upon the facts and the position as we understand it currently occupied by Ms. Campbell, it does not appear that a "substantial interest" requiring filing of a conflict of interest statement exists, nor does it appear that the functions she performs as a School Board member necessitates her disqualification under Arizona's conflict of interest statutes.

The background facts regarding Ms. Campbell's current employment are as follows:

Ms. Donna Campbell has recently accepted the position of Program Director - External Operations with the Arizona Education Association ("AEA"). The responsibilities of the Program Director are enumerated in the "Notice of Position Opening" which is attached hereto as Exhibit "A." The Program Director is responsible for developing AEA programs and formulating policy; serves as a resource person to advise other AEA personnel on alternative professional growth plans; career development plans;

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alternative approaches to improvement of teacher skills and abilities; and educational reform. The Program Director - External Operations does not represent teachers individually or collectively before any District in the State. Program development may include: (1) professional development; (2) school employee compensation systems; (3) education reform; (4) research; and (5) school finance. Secondary concerns of the Program Director are: (a) political action; (b) government relations; (c) coalitions; and (d) communications.

The Program Director's salary is paid by the AEA, whose funding is derived from membership dues. The AEA has a local affiliate, the Scottsdale Education Association, in the District. As regards tenure in this position, in the event that finances decrease to a point where staff reductions would be required in the professional-growth area, staff layoffs would be based on the concept of seniority. (See organizational flow chart attached hereto as Exhibit "B.") Fringe benefits to the position are as provided in the AEA-AEASO collective bargaining agreement.

The Conflict of Interest Law (the "Act") applies to school districts and their Governing Boards. A.R.S. §§ 38-501(A) and 38-502(5). Its provisions are exclusive notwithstanding any other provision of law to the contrary. A.R.S. § 38-501(B). Title 15 prohibitions shall be in addition to the Act if consistent with its intent and provisions.

A.R.S. § 38-503, specifically subparagraphs (a) and (b), provides:

(A) Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

(B) Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

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In considering the extent to which Ms. Campbell's performance of Board duties may possibly be restricted, the inquiry is whether she has a substantial interest in the Governing Board's decision. The Act defines "substantial interest" as meaning:

Any pecuniary or proprietary interest, either direct or indirect, other than by remote interest.¹

§ 38-502(11). Our analysis of this issue considers the case law and opinions of the Attorney General which have construed the Act. Also taken into consideration is the public policy that decisions by public bodies are to be made strictly in the public interest and should be free of and shielded from any possibility of personal influences or self-dealing. See, e.g., Maucher v. City of Eloy, 145 Ariz. 335, 701 P.2d 593 (App. 1985), Yetman v. Naumann, 16 Ariz. App. 314, 482 P.2d 1252 (1972). Where the private interest of a public officer creates a possibility of a conflict of interest with his public duty, that public officer should be allowed to freely disqualify himself absent clear and unambiguous statutory language to the contrary. Croaff v. Evans, 130 Ariz. 353, 636 P.2d 131, 138 (App. 1981). These statutory provisions are designed to thwart not only improper behavior but the appearance of impropriety as well.

The Arizona Attorney General has considered situations similar to the instant case on several occasions. Those opinions are briefly summarized below.

Op. Atty. Gen. No. 77-41 ("Carey I")

The issue in Carey I was whether a potential conflict of interest existed where a Governing Board member was also employed as the Executive Director of a UniServ Unit which was not connected to the subject District in any manner. The Attorney General concluded that Carey's employment with the UniServ Unit, of itself, did not constitute a conflict of interest because (1) no district teachers, over whom Carey exercised any form of control as a Board member, were members of the UniServ Unit, and

¹ The Act defines "remote interest" by articulating ten factual relationships at A.R.S. § 38-502(10). None of these relationships apply to the instant case save perhaps subparagraph (j): "Remote interest" means that a member of a trade, business, occupation, profession or class of persons which is no greater than the interest of the other members of that or similar trades, business, occupations, professions or classes of persons.

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(2) the district teachers had no control over Carey's salary or tenure in the position of UniServ Director nor did Carey, whose salary was paid by the AEA, have any control over the source of his salary.

Op. Atty. Gen. No. 179-290 ("Carey II")

The same issue was presented in Carey II, as in Carey I, but at that time Carey's wife became a UniServ Director representing the teachers of the District where Mr. Carey was a Governing Board member. The Attorney General found that potential conflicts of interest did exist for the Board member as a result of his and his wife's jobs as UniServ directors and limited certain areas of participation in Governing Board decisions.

It was held that the Board member had "at least an indirect direct proprietary and pecuniary interest in voting in accordance with AEA policies on issues that affect the AEA." The Attorney General supported this conclusion by examining the Board member's job duties as UniServ director. Specifically, the Attorney General stated:

His employment duties include facilitating the programs and activities of the AEA and supporting effective political action with respect to issues on which the AEA has taken a position. His continued employment as a UniServ Director is presumably dependant upon how well he supports AEA-related matters, thus creating a substantial interest in those decisions to be made by the school board which involve issues on which the AEA has advocated a particular point of view or taken a formal position.

Op. at p. 3. The foregoing description characterizes the Board member as essentially being a "lobbyist" for the AEA.

Carey's employment as a UniServ director was not seen as creating a conflict of interest as to all matters coming before the Board. The Attorney General found that personnel matters, such as teacher salaries, fringe benefits and grievances, clearly presented a conflict of interest. All other matters were to be considered on a case by case basis with Mr. Carey seeking advice from the District's legal counsel.

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Op. Atty. Gen. No. I83-111 ("Kearney")

This opinion request concerned the application of the Conflict of Interest rules to a school administrator, rather than a board member, who was also the secretary/treasurer to a non-profit corporation which rented classroom space from the District to run its summer school programs. The Attorney General concluded that Mr. Kearney did have a substantial interest in the decision of the District to enter into rental agreements with the non-profit corporation. The rationale used by the Attorney General was that

employment by an organization which is an interested party in a contract with the public body constitutes . . . a pecuniary or proprietary interest since the contract will confer an economic benefit or detriment upon the organization and therefore will have at least an indirect pecuniary effect on the employee. See Ariz. Atty. Gen. Ops. I79-263, I77-146.

Op. at p. 3.

In Yetman v. Naumann, supra, the court upheld the conflict of interest statute and stated, in part, that the "substantial interest" standard for purposes of disqualification did not include

a mere abstract interest in the general subject or a mere possible contingent interest. Rather, the term refers to a pecuniary or proprietary interest, by which a person will gain or lose something as contrasted to general sympathy, feeling or bias.

492 P.2d at 1255.

The job responsibilities which the present Board member has with the AEA are factually distinguishable from the job responsibilities the Attorney General found objectional in Carey II and Kearney. Unlike Mr. or Mrs. Carey, this Board member is not a UniServ representative and does not (a) advise District teachers during grievance procedures at the administrative or Governing Board level; (b) represent the teachers' position regarding salary and fringe benefits to the Governing Board during the meet and confer process; and (c) lobby the AEA position to any Governing Board. Notably, in Carey II, the only areas which the Attorney General found to present a definite conflict of interest

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for Mr. Carey were personnel matters. Unlike Carey II, it cannot be assumed Ms. Campbell's position is conditioned on "how well [she] supports AEA-related matters" or represents the interests of the District's teachers.

The function of Ms. Campbell's job is to develop programs and formulate policy for the Association. Having done that, the Program Director then is available as a resource person to handle inquiries and to advise other AEA personnel. Her continued employment as Program Director relates to those skills. In the event that staff reductions occur at the AEA, the reductions are made based on seniority.

Unlike Carey II, where the Board member's wife was the UniServ director for the teachers in that District and the Board member benefited from his wife's salary, the Program Director has no pecuniary or proprietary interest in decisions pending before her fellow Board members. Our facts are distinguishable from those in Op. Atty. Gen. No. 183-111 ("Kearney") where the Attorney General opined that employment by an organization that is a party to a contract with the public body constitutes a pecuniary or proprietary interest. Here, Ms. Campbell's employer, the AEA, is not a party to any contract with the District and, therefore, there is no benefit or detriment conferred directly or indirectly on her.

It appears that a Program Director is sufficiently removed from representation of AEA members before school boards to classify her AEA position as a remote interest for these reasons:

(1) The focus of her job is on program development for the AEA, therefore her energies are directed towards determining the areas and concerns which are of the greatest importance to the AEA membership. A tangential consideration to this is determining resource allocation and addressing budget development for the Association.

(2) Once programs have been developed it is the Program Director's responsibility to implement the programs. This responsibility contemplates her acting as a resource person for AEA employees to come to her for advice on alternative professional-growth plans; career development plans; alternative approaches to improvement of teacher skills and abilities; and educational reform, including new approaches to teacher compensation.

(3) The Program Director must evaluate the programs. This responsibility requires her to maintain a strong sense

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of objectivity in order to accurately assess the specific program's continuing value to the association.

(4) The position also requires her to act as a liaison with AEA commissions and committees. This responsibility is wholly unrelated to her duties as a Board member.

(5) The requirement that she act as a liaison with UniServ units and locals is a statewide obligation. The Program Director has no special or specific relationship or interest with the AEA members who are employed by the District. She is acting as a liaison between the UniServ units and the AEA leadership and management, not between the Governing Board and the UniServ units.

(6) The Program Director's compensation and employment security is completely unrelated to how many of her programs are voted on approvingly by the school district in which she is a Governing Board member. Rather, the criteria for determining the rate of compensation is directed towards her experience and training.

We are of the opinion that mere ideological concerns do not constitute a substantial interest under the Act, Yetman v Naumann, 492 P.2d 1252 (App. 1972). There, a special action was brought to challenge the propriety of a member of the State Board of Health participating in the Board's consideration of a petition submitted by several copper companies to reduce air pollution standards, where the member was also Chairman of the Board of a construction company which did a significant amount of business with the copper companies. The board member defended against the special action on the ground that the term "substantial interest" was unconstitutionally vague. The Court of Appeals rejected this defense. The Court declared that the term was not vague for the reasons that the public policy behind the Act gave "substantial interest" definition as did the statutory language in the Act. 492 P.2d at 1255. Specifically, the Legislature defined "substantial interest" expressly (A.R.S. § 38-502(11)) and impliedly as well by excluding certain relationships under the definition of "remote interest" (A.R.S. § 38-502(10)).

The public policy reasons cited by the Court (see also p. 4, supra) speak to the concern that a public official's ability to govern should not be impaired by his or her personal economic interests. Positions on ideological issues may be the reason a particular public official is elected to office. Ideological concerns are not seen as being proprietary or pecuniary, and are more properly categorized as interests of "general sympathy, feeling or bias." 492 P.2d at 1255 (quoting Moody v. Shuffleton, 257 P. 564, 566 (Cal. App. 1927), rev'd on grounds that interest

was shown, 203 Cal. 100, 262 P. 1095 (1928)).² Were this otherwise, no teacher or public school administrator would be eligible to serve as a Governing Board member in Arizona.

Under this analysis, there are no readily apparent issues which automatically require Ms. Campbell to disqualify herself from fully participating in the decision-making process. We would endorse, however, the cautionary language appearing in Carey II that the Board member consider each matter that raises a concern on a case-by-case basis and confer with District legal counsel on specific issues. In this regard, the one single factor which we see as possibly limiting the Board member's ability to participate is the appearance of impropriety. The appearance of impropriety is an amorphous concept which must be tested against a specific fact pattern. The Board member will be in the best position to know the facts and will have to exercise judgment accordingly.

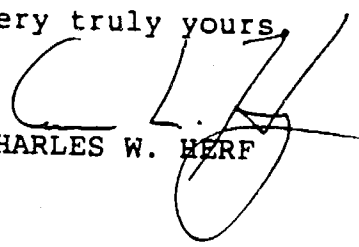
² The Moody court considered at length what types of interests were not of a nature which merited disqualification:

It must not be a mere possible contingent interest, not an interest in the question or general subject to which the matter requiring adjudication relates, but one that is visible, demonstrable, and capable of precise proof. It must be a pecuniary or proprietary interest, a relation by which, as debtor or creditor or otherwise, he will gain or lose something by the result of the proceedings. It must be direct and personal and not merely possible or contingent. (Citation omitted.) "Where a statute speaks of 'interest' or being 'interested,' it in general but not always means a pecuniary or proprietary interest, by which a person will gain or lose something, in contradiction to general sympathy, feeling of bias." Dillon on Mun. Corp. note, p. 1146. "A mere sentimental interest, or an interest in the facts which the issues make it necessary for him to determine, which may tend to induce him to give more weight to the evidence for one party than to the evidence for the other respecting such facts, is not the interest which will disqualify him." (Citations omitted.)

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Pursuant to A.R.S. § 15-253.B., we are transmitting a copy of this letter to the Arizona Attorney General for review. After you have had an opportunity to review the content of this letter, please do not hesitate to contact me if any factual assumptions are not accurate or you have any questions.

Very truly yours,



CHARLES W. HERF

CWH/smh

cc: Governing Board Members
The Hon. Robert Corbin

NOTICE OF POSITION OPENING

Date of Posting: February 26, 1987

Deadline for Application: March 20, 1987

Date of Employment: As soon as possible

Applicants: Send letter of application, resume and three (3) letters of recommendation to Cheryl Anderson, Manager, External Operations, Arizona Education Association, 2102 W. Indian School Road, Phoenix, Az. 85015

Position:

Program Director - External Operations

Primary Focus: Professional Development
School Employee Compensation Systems
Education Reform
Research
School Finance

Secondary Focus: Political Action
Government Relations
Coalitions
Communications

Staff Relationship:

Responsible to the Manager of External Operations

Responsibilities:

Develop and implement, in cooperation with AEA leadership and management, AEA programs. Coordinate the delivery of AEA programs through UniServ units and locals with Unified Services Employees and local leaders. Assistance shall be provided, as deemed necessary by AEA management, to meet the needs of the Association in:

- a. Program planning;
- b. Program implementation;
- c. Program evaluation;
- d. Resource allocation and budget development;
- e. Liaison with AEA commissions and committees;
- f. Liaison with UniServ units and locals.

Qualifications:

- a. Knowledge of Association goals, objectives, programs, and procedures.
- b. Knowledge of general and AEA budgeting principles.
- c. Knowledge of basic communication principles.
- d. Skill in gathering and articulating information used as a basis for developing specific strategies.
- e. Ability to communicate effectively, both orally and in writing.
- f. Knowledge of basic principles of adult learning and training.
- g. Knowledge of local, state and national political systems.
- h. Knowledge of print and electronic media.
- i. Basis skills in organizing.
- j. Assertive behavior and attitudes

affiliated with the National Education Association

Arizona Education Association

2102 West Indian School Road - Phoenix, Arizona 85015 - (602) 264-1774

Desirable Additional
Qualifications:

1. Understanding of and skills in assertive communication.
2. Behaviors demonstrating:
 - a. high energy level;
 - b. openness;
 - c. willingness to change;
 - d. willingness to interact authentically;
 - e. commitment to initiative and risk taking;
 - f. commitment to accountability and follow-through;
 - g. accuracy in organization.

Salary:

Commensurate with experience and training: \$33,000 to \$46,000.

Benefits:

Consistent with AEA-AEASO collective bargaining agreement.

The AEA is an equal opportunity employer with an affirmative action employment program. Minorities and women are encouraged to apply.